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FEB - 5 2003

Federal Communications Commission  
Office of Secretary

VIA HAND DELIVERY

February 5, 2003

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-A325  
Washington, D.C. 20554

Re: *Ex Parte* Presentation  
CC Docket Nos. 01-338, 98-147, 96-198

Dear Ms. Dortch,

Enclosed please find *six* copies of an *ex parte* letter for inclusion in each of the above-referenced dockets. The attached letter was sent via facsimile yesterday to each of the FCC Commissioners and a copy will be sent today to each party on the cc list of <sup>the</sup> letter with the original letter hand-delivered today to Chairman Powell.

Should you have any questions regarding this matter, please feel free to contact me

Sincerely,



Mark J. O'Connor



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FEB - 5 2003

Federal Communications Commission  
Office of Secretary

February 4, 2003

**VIA HAND DELIVERY**

Chairman Michael Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Line Sharing and Broadband Competition  
*Ex Parte* Presentation: CC Dkt. No.s 01-338, 98-147, 96-98

Dear Chairman Powell:

On behalf of EarthLink and hundreds of thousands of broadband DSL subscribers, we urge you in the Commission's upcoming decision in the UNE Triennial Review to retain Line Sharing as an unbundled network element (UNE). We further ask you to consider the disruption to hundreds of thousands of DSL service subscribers that would result if line sharing were to be restructured or eliminated.

EarthLink has been offering broadband services since 1998 and is today one of the few independent ISPs offering broadband service throughout the nation. We offer these services over a variety of platforms. However, DSL is our major broadband platform and Covad, the last remaining major DSL CLEC, is one of our largest DSL suppliers. Line sharing allows competitive DSL suppliers like Covad to offer DSL transmission services in many markets where the ILEC would otherwise be the only other source for DSL lines.

Line sharing reduces barriers to competition and discourages monopoly pricing and discrimination by the ILECs. It also allows for product offerings such as symmetric DSL that the ILECs are reluctant to provide in competition with their higher-priced T-1 services. Without line sharing, broadband consumers will face higher prices and diminishing quality of service.

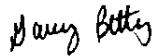
Eliminating line sharing would force competitive LECs to purchase an entire loop, while incumbent LECs would continue to enjoy the economy and efficiency of line sharing. Similarly, compromising line sharing by preserving it in name but allowing incumbent LECs to set monopoly prices for it would undermine the profitability of competitive LECs such as Covad, and in turn, of independent ISPs such as EarthLink.

The end result would again be higher prices and diminished service quality for broadband end users.

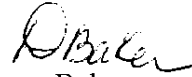
Finally, the Commission cannot consider elimination of line sharing without closely examining the disruption that such a decision would cause for hundreds of thousands of existing DSL subscribers. There exists no industry-accepted practice of migrating DSL customers from one underlying provider to another without an interruption in service. For that matter, the ILECs would no doubt use such interruption in service to "poach" that small segment of the retail DSL market that they do not already control. It would be a disservice to DSL consumers if this were the result of the Commission's actions.

Pursuant to the FCC's *ex parte* rules, six copies of this letter will be provided today to the Secretaries' office to be included in the above-referenced dockets.

Sincerely,



Carry Betty  
President and CEO  
EarthLink, Inc.



Dave Baker  
Vice President  
EarthLink, Inc.

cc:

Commissioner Kathleen Abernathy  
Commissioner Jonathan Adelstein  
Commissioner Michael Copps  
Commissioner Kevin Martin  
Marsha MacBride  
Chris Libertelli  
Matthew Brill  
Lisa Zaina  
Jordan Goldstein  
Dan Gonzalez  
William Maher  
Jeff Carlisle  
Michelle Carey  
Scott Bergmann  
Brent Olson  
Jeremy Miller  
Tom Navin  
Bob Pepper  
Bob Cannon